



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,949	07/11/2006	Hiroshi Nishiyama	293275US0X PCT	1470

22850 7590 04/03/2008
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER

RAE, CHARLESWORTH E

ART UNIT	PAPER NUMBER
----------	--------------

1611

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

04/03/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary

Application No.

10/585,949

Applicant(s)

NISHIYAMA ET AL.

Examiner

Charleswort Rae

Art Unit

1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/03/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/11/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's response with traverse to the election requirement, filed 12/03/07, electing invention 4-bromo-6- [3 -(4-chlorophenyl)propoxy] -5 -(3 -pyridylmethylamino)-3 -(2H)-pyridazinone as the compound species, is acknowledged.

Applicant's statement that claims 1-9 read on the elected species is acknowledged and made of record.

Status of the Claims

Claims 1-9 are currently pending in this application.

Priority

Receipt of a certified copy of the foreign priority non-English application, received 7/11/06, is acknowledged of papers submitted under 35 USC 119(a)-(d).

Election

Applicant proffers the following traversal argument:

- 1) No adequate reasons and/or examples have been provided to support patentable distinctness.
- 2) Examiner has failed to meet the burden necessary to sustain the requirement (MPEP 803) as no serious burden will be encountered if all of the species were examined together.

In response, the election requirement is withdrawn as applicant's arguments are found to be persuasive.

Claim rejections – 35 USC 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 USC 102(b) as being anticipated by Tanikawa et al. (US Patent 5,314,883).

Tanika et al. teach 4-bromo-6- [3 -(4-chlorophenyl)propoxy] -5 -(3 -pyridylmethylamino)-3 -(2H)-pyridazinone and the pharmaceutically acceptable salt thereof, the identical compound recited in claim 3 (see reference claim 14). The salt species recited in claims 4, 5, 6, 7, 8, and 9 (e.g. hydrochloride, organic salt, inorganic salt) are reasonably construed to be representative of the pharmaceutically acceptable salt genus. The term "[a] vascular intimal hyperplasia inhibitor" is construed to be an inherent characteristic of the genus of compounds represented by formula I as recited in instant claim 1. Thus, claims 1-9 are found to be anticipated by the cited prior art.

Nonstatutory Obviousness-Type Double-Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent 5,314,883; claims 1-5 of US Patent 5,856,327; and claims 1-6 and 8 of US Patent 5,750,523. Although the conflicting claims are not identical, they are not patentably distinct from each other

because the instant claims are either anticipated by, or would have been obvious in view of the referenced claims.

Thus, claims 1-9 are deemed obvious variants of the limitations of the patented subject matter in the above cited patents.

It is noted that applicant has numerous issued patents and/or pending applications encompassing the same or similar subject matter of the instant application. Applicant should review all subject matter considered the same or similar, and submit the appropriate Terminal Disclaimer(s). For example, issued patents: 5,318,968; and 5202323.

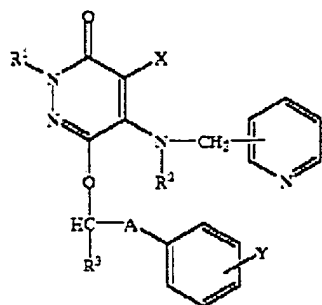
Relevant Art of Record

The below art references made of record and relied upon are considered pertinent to applicant's invention:

Egi et al. teach compounds having the below structure (abstract):



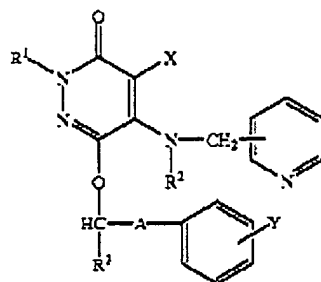
(I)



wherein each symbol is as defined in the specification, or a pharmacologically acceptable salt thereof, as an active ingredient. The pyridazinone compound (I) and a pharmacologically acceptable salt thereof in the present invention promote angiogenesis and potentiate the angiogenic effect of a drug having such effect, and are useful as an angiogenesis promoter and angiogenesis potentiator.

Maruyama et al. (US Patent 6,369,061) teach compounds with the below structure and methods of treating spinal canal stenosis comprising administering an effective amount of said compounds (see also reference claims 1-3).

(I)



wherein R^1 , R^2 and R^3 are each independently a hydrogen atom or a lower alkyl, X is a halogen atom, a cyano or a hydrogen atom, Y is a halogen atom, a trifluoromethyl or a hydrogen atom, and A is a C_1 - C_8 alkylene optionally substituted with a hydroxyl, or its pharmacologically acceptable salt.

Application/Control Number:
10/585,949
Art Unit: 1611

Page 7

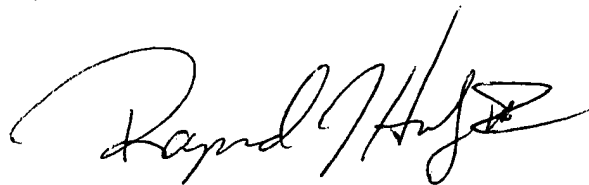
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charlesworth Rae whose telephone number is 571-272-6029. The examiner can normally be reached between 9 a.m. to 5:30 p.m. Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached at 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 800-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

31 January 2008
CER



RAYMOND HENLEY III
PRIMARY EXAMINER
Au 1614